

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re Terrorist Attacks on September 11, 2001	03-md-1570 (GBD)(SN) ECF Case
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This document relates to:

Ashton, et al. v. al Qaeda Islamic Army, et al., 02-cv-6977 (GBD)(SN)

Burlingame v. Bin Laden, et al., 02-cv-7230 (GBD)(SN)

Bauer et al. v. al Qaeda Islamic Army, et al., 02-cv-7236 (GBD)(SN)

Schneider et al. v. Islamic Republic of Iran, 02-cv-7209 (GBD)(SN)

**DECLARATION OF ANDREW J. MALONEY, III, ESQ. IN SUPPORT OF MOTION
TO ADD ADDITIONAL PLAINTIFFS AGAINST THE TALIBAN**

I, ANDREW J. MALONEY, III, Esq., pursuant to 28 U.S.C. § 1746, hereby state under penalty of perjury that:

1. I am an attorney representing the plaintiffs in the above-referenced matter and a partner at Kreindler & Kreindler LLP (“Kreindler & Kreindler”). I am familiar with the facts and circumstances of this case and am admitted to practice in this Court.

2. I submit this Declaration in support of the *Ashton* Plaintiffs’ motion under Rules 15 and 21 of the Federal Rules of Civil Procedure, and in accordance with Case Management Order #2, at ¶12, for leave to amend or supplement their Sixth Amended Complaint to add Additional Plaintiffs as parties as set forth in annexed Exhibit A (*Ashton* Additional Plaintiffs), Exhibit B (*Bauer* Additional Plaintiffs), Exhibit C (*Burlingame* Additional Plaintiffs) and Exhibit D (*Schneider* Additional Plaintiffs) in the above-captioned action. The individuals identified in the annexed Exhibits A through D are collectively referred to herein as the “Additional Plaintiffs.”

3. Additional Plaintiffs consist of plaintiffs in the *Ashton* action, which was consolidated for liability purposes with the *Bauer*, 02-cv-7236, *Burlingame*, 02-cv-7230, and

Schneider, 02-cv-7209, actions on November 19, 2002 (02-cv-6977, ECF 5) (hereinafter referred to as *Ashton* Plaintiffs). The *Ashton* Plaintiffs filed a Consolidated Master Complaint on March 6, 2003 (02-cv-6977, ECF 11) that was amended several times up through the *Ashton* Sixth Amended Complaint filed March 30, 2005 (02-cv-6977, ECF 465). The *Burlingame, Bauer* and *Schneider* plaintiffs remain segregated within all consolidated *Ashton* filings and are identified therein according to their separate docket number and counsel. Each of these actions join this motion under the *Ashton* caption.

4. In Case Management Order #2 entered on June 16, 2004, the Court established a process for adding plaintiffs to the terror litigation by listing their names and filing as supplemental pleadings under Fed.R.Civ.P. 15(d) and specified that “[p]laintiffs added by this procedure need not re-serve defendants who have already been served.” (ECF 247 at ¶ 12).

5. This Court authorized service of process by publication on certain defendants, including the Taliban by Order dated September 16, 2004. (ECF 445 at 1, 11). The *Ashton* plaintiffs served their Sixth Amended Complaint on the Defendant Taliban, and other defendants, by publication with verification of publication filed on March 4, 2005 and March 16, 2005. (ECF 709, 735). The Taliban never answered, and the *Ashton* Plaintiffs thereafter moved for a default judgment, which this Court granted on May 12, 2006 (ECF 1797). A true and accurate copy of this judgment along with the Exhibit to which it refers, setting forth the defaulting defendants is attached to this Declaration as Exhibit E. The Court issued the default judgment for all plaintiffs included in the *Ashton* complaints up through the “Sixth Amended Consolidated Master Complaint … filed on September 30, 2005.” *Id.*

6. Claims for the Additional Plaintiffs identified in Exhibits A, B, C and D hereto were initially pursued by the personal representatives of the estates of the 9/11 victims. In

accordance with procedures established by the Court to manage this complex litigation, Additional Plaintiffs now seek to be added to the *Ashton* Sixth Amended Complaint as plaintiffs in their own names with direct claims against the Taliban.

7. The Additional Plaintiffs are estate representatives of the victims killed in the 9/11 attacks and surviving immediate family members (or functional equivalents) of the 9/11 victims (or the estate representatives of those survivors who have subsequently died). The Additional Plaintiffs were not previously named individually as plaintiffs with their own individual claims against the Taliban, although they have previously sued co-defendants, including, among others, the Islamic Republic of Iran, the Republic of the Sudan and the Kingdom of Saudi Arabia, either directly or by utilizing the Court's short form procedures. Additional Plaintiffs have direct relationships previously recognized by this Court as being qualified for solatium damages or have been previously adjudged by this Court as eligible for solatium damages against co-defendants as "functional equivalents" of 9/11 immediate family members. Counsel representing the *Ashton*, *Burlingame*, *Bauer* and *Schneider* plaintiffs have verified the relationships between the Additional Plaintiffs and the 9/11 victims.

8. The *Ashton* plaintiffs' Sixth Amended Complaint would remain the same in all respects but for identifying the Additional Plaintiffs against the Taliban by name and setting forth their relationships to the 9/11 victims.

9. The *Ashton* plaintiffs seek to include Additional Plaintiffs to this action without otherwise affecting any prior service, order or judgment entered by the Court previously in this litigation,. The *Ashton* Plaintiffs also request that the Court permit Case Management Order #2 (ECF 247, ¶12) to apply to the Additional Plaintiffs.

10. Counsel for the *O'Neill* and *Burnett* Plaintiffs recently filed motions requesting

similar relief to add additional plaintiffs with claims against the Defendant Taliban to their complaints. The form of this motion and the relief requested herein are consistent with the form and relief requested by the *O'Neill* and the *Burnett* Plaintiffs, all of which were approved by this Court. (ECF Doc. Nos. 7949, 8111, 8150, 8473, and 8696).

WHEREFORE, Plaintiffs respectfully request that the Court grant the *Ashton* Plaintiffs' motion to amend or supplement the *Ashton* Sixth Amended Complaint to include the Additional Plaintiffs listed on Exhibits A, B, C and D to this Declaration as plaintiffs with claims against the Defendant Taliban.

Dated: November 4, 2022
New York, New York

/s/ Andrew J. Maloney, III
Andrew J. Maloney, III